

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHANNA STROTHERS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Jersey City, NJ

*Docket No. 99-373; Submitted on the Record;
Issued May 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 20 percent impairment of each upper extremity, for which she received schedule awards.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 20 percent impairment of each upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) have been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

On December 4, 1991 appellant, then a 50-year-old data technician, filed an occupational disease claim, alleging that factors of employment caused bilateral carpal tunnel syndrome, which the Office accepted as being employment related. On September 13, 1994 she filed a

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides* (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

claim for a schedule award. By decision dated August 11, 1995, the Office granted her a schedule award for a 20 percent permanent impairment of the upper extremities for a total of 62.40 weeks of compensation, to run from August 4, 1994 to October 14, 1995.

Following further development, by letter dated February 3, 1997, the Office referred appellant to Dr. Joseph Barmakian, a Board-certified orthopedic surgeon, for an impartial medical evaluation.⁵ Based on his opinion, in an April 29, 1997 decision, the Office granted appellant a schedule award for an additional 20 percent permanent impairment of the upper extremities for an additional 62.40 weeks of compensation, to run from October 15, 1995 to December 24, 1996. On April 14, 1998 appellant, through counsel, requested reconsideration, arguing that Dr. Barmakian had utilized the incorrect table under the A.M.A., *Guides* in evaluating appellant. By decision dated July 17, 1998, the Office denied modification of the prior decision. The instant appeal follows.

On appeal, counsel contends that Dr. Barmakian should have used Table 15, page 54, of the A.M.A., *Guides* in determining appellant's degree of impairment because she has "severe" impairment of the upper extremities due to her carpal tunnel syndrome.

The A.M.A., *Guides* provides that impairment of the hand and upper extremity secondary to entrapment may be derived by measuring the sensory and motor deficits, as exemplified by Table 15⁶ or, alternatively, by utilizing the method provided in Table 16.⁷ Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁸

⁵ The Office determined that a conflict in the medical evidence existed between the opinions of appellant's treating osteopathic physician, Dr. David Weiss, and that of the Office medical adviser and had initially referred her to Dr. Howard L. Blank for an impartial medical evaluation. Following several unsuccessful attempts to obtain Dr. Blank's analysis of appellant's degree of disability under the A.M.A., *Guides*, the Office referred appellant to Dr. Barmakian.

⁶ A.M.A., *Guides*, *supra* note 3 at 54.

⁷ *Id.* at 56-57.

⁸ See Kathryn Haggerty, 45 ECAB 383 (1994); Edward E. Wright, 43 ECAB 702 (1992).

By report dated February 17, 1997, Dr. Barmakian advised that appellant had a permanent impairment of the upper extremities as a result of the employment-related carpal tunnel syndrome. He then determined that under Table 16 of the A.M.A., *Guides*⁹ appellant demonstrated a moderate degree of residual median nerve entrapment of both wrists, which totaled 20 percent in each upper extremity. Dr. Barmakian concluded:

“The basis for the opinion of the permanent partial impairment is as follows: according to the [A.M.A., *Guides*] there are two ways to determine permanent partial impairment from median nerve entrapment at the wrist. One method involves determination of sensory deficit and motor deficit. This method involves measuring sensory and motor deficits and using the appropriate tables to determine a permanent partial impairment. The second method is to use Table 16 on page 57 to estimate the permanent partial impairment due to the severity of involvement at each nerve entrapment site.

“In my opinion the first method is invalid in this patient. She demonstrated inconsistencies in the examination, which in my opinion do not lend themselves to an accurate determination of permanent partial impairment according to the first method. Specifically, the sensibility testing revealed greater than 15 mm. of two-point discrimination in all digits including the ulnar nerve distribution. This degree of absence of sensibility is severe and should be associated with cuts and burns on the skin indicating inability to properly feel dangerous or hot objects. She demonstrated none of the injuries to her hand which would be expected from such a severe loss of sensation. In addition, there is an absence of Tinel’s sign at the distal wrist crease and the sensory loss did not correspond to any anatomic peripheral nerve distribution in the hand. In terms of motor testing she demonstrated 4/5 strength in the abductor pollicis brevis muscle bilaterally. This muscle is innervated by the median nerve and there were no signs of atrophy in it, only mild weakness on the clinical examination. The grip strength test was in my opinion invalid as she did not show increasing grip strength with the different positions of the Jamar dynamometer. This has been shown to indicate lack of maximal effort on this test.”

In this case, the Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Barmakian, the referee examiner, who provided a comprehensive explanation supporting his reasoning in applying the values found in Table 16 rather than those found in Table 15 of the A.M.A., *Guides*. Appellant, therefore, failed to establish that she is entitled to more than the 20 percent impairment of each upper extremity, for which she has received schedule awards.

⁹ A.M.A., *Guides*, *supra* note 3 at 57.

The decision of the Office of Workers' Compensation Programs dated July 17, 1998 is hereby affirmed.

Dated, Washington, D.C.
May 10, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member